



# THE LAW OF THE CASE.

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## A SOFT ANSWER

TO THE

## ANGRY WORDS

OF

MESSRS. OGILVY & CO.,

BY

JAMES JOHNSTON.

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"He parted frowning from me, as if ruin  
"Leaped from his eyes."

Montreal:

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FOR  
IMPORTING MERCHANTS.

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A Circular, addressed to the merchants of Canada, informs them, that the firm of Messrs. Ogilvy & Co., dry goods importers, Montreal, is composed of three members, who are "brothers," viz.: John, James and Thomas Ogilvy. John has his head quarters in Montreal, as a general rule, though he is occasionally absent. However, the daily press, now-a-days, chronicles the whereabouts and doings of prominent men, and the public are informed that he was engaged fishing salmon, being particular in giving the number caught, the weight of each, and the grand total. Whether the fish were all caught with the fly, or with the silver hook, is not stated.

This Circular informs us, further, that James, "one of our partners, remains constantly, we may say, in Europe, at very considerable expense." Thomas, we know, attends to the office department in Montreal, passing the imports through the Custom House; and the experience of the firm, as importing merchants, extends over twenty years.

James, who makes the best use of his time in examining the various markets and purchasing at favourable points, lately "struck ile, not fluid, but substantial all wool clan tartans, kirtle make, cheap, and, for the money, quite a heap, as any man would buy with cash and sense." Their history was this. The goods were of first-rate material, made to order for the United States market, and sent to New York to Messrs. Townsend & King, importers. On arrival, the Americans had ceased to wear the tartan; checks were *down*, stripes were now *up*, it was a bad *spec* there, but money must be made out of them, and the goods were sent back to Britain. We are next informed that John J. Townsend found a buyer in Bradford, Messrs. A. & S. Henry & Co., at a price which is not stated, but they were *cheap*, and in the way of business



they resold them at a *fair profit*, evidently showing that the goods had taken a start and that their market price was improving. Part of the lot was taken by a Paris buyer for France, the remainder was sold to James Ogilvy in the month of April last, for account of Ogilvy & Co., Montreal. The prices were: 6 cases at 10½d. per yard; 3 cases at 13½d. per yard; and 6 cases at 13½d. per yard; which was a perfectly legitimate transaction. The market for wool had been nearly stationary for some time back, but all at once wool went up like a rocket. All goods made of wool or worsted, whether plain, striped or checked, followed the rise, and by the 8th of June, the date the *Lake Erie*, the vessel in which the goods were shipped for Ogilvy & Co., left Liverpool, clan tartan, kirtle make, had also much improved in value, but how much Messrs. A. & S. Henry & Co. do not say. They swear to the April price; but to the fair market value at the time and place of exportation they don't. That is not the question they had been asked to answer. On the 21st July, when two cases reach the Customs Examining Warehouse, Montreal, the sworn appraiser there gives what he conceives to be the value at the time and place of exportation, and requires a post entry to be made by Ogilvy & Co., to bring up the goods to the price that they had gained in value between the month of April and the date of shipment, 8th June, "and a halfpenny sterling a yard more would have done it." No fine would have been required; and if the goods had remained in A. & S. Henry & Co.'s ownership till June, and not been worth a halfpenny a yard more at that date, "it would have been a case without a parallel" in the experience of all others, who had to pay a price for sound saleable wool goods. The appraiser, on the 21st, had taken his stand according to the law, which governs him and governs the case. On the 26th, Ogilvy & Co. write to the collector, taking their stand *against the law of the case*, but proposing an alternative, or terms. These terms are never proposed by the appraiser to any one unless there is a suspicion and doubt, "and this he did not mean to convey." In a second note, without date, Messrs. Ogilvy & Co. say "we confirm our dissatisfaction with the appraisements," and the acting Collector finding that the opinion of experts on the 31st, or the Collector's letter of the same date, was of no avail, wrote Ogilvy &

Co. on the 4th August, "I regret to have now to reiterate the request therein made, that you would amend your entry No. 680 of clan and tartan kirtle, according to the valuation made by the merchants summoned to examine and appraise the same, and pay the 50 per cent. additional duty, as provided by section 44 of the Customs Act, in cases of valuation to the extent of 20 per cent., as well as the fees of five dollars to each of the referees."

If Ogilvy & Co. wanted to get the goods to sell them at the commencement of the dispute (21st July) they *knew* the *short cut* for that, they could have paid the post entry "under protest." Their own people tell, without reserve, that they paid a post entry on *black gros de naps*, under protest, about the same time as the dispute arose about the clan tartan kirtles. Had the same course been followed in the latter case the experts would have been saved a most unpleasant duty, and one which is not so profitable as some imagine, for I have given my opinion when solicited, to the best of my judgment, during the last twenty-six years, and I have yet to get my first five dollars for doing so.

As to the conduct of the experts, complained of by the Messrs. Ogilvy, I may state shortly, that about the 27th July, the Collector wrote to Ogilvy & Co., that he had summoned two disinterested merchants, acquainted with that kind of goods, to attend at the Customs Examining Warehouse, on the 31st, at eleven o'clock in the forenoon, for the purpose of examining and appraising the same. *Mark*; this was on the 31st July, ten days after the appraiser had made a written request to Ogilvy & Co. for a post entry. I attended and was met by Mr. George Young, merchant, and Mr. Thomas Ogilvy. We soon got to business; the invoices of Messrs. A. & S. Henry & Co. were put into our hands, which were *all genuine*, and James Ogilvy's letter to Ogilvy & Co., also *genuine*.

Mr. Thomas Ogilvy next gave us the information, that James had got a great job of the lot—that they were bad colours and bad patterns. Now, the Ogilvy clan may be bad, but all clans are not bad. It was new to me to be told that the leading clans were bad patterns; Scotchmen, whose hearts are in the right place, don't say that. Her Majesty the Queen wears the tartan; the Princess Louise adores the



Argyle ; those who saw the men sporting the tartan with Sir Colin Campbell in Spain, Belgium, at the Alma, at the head and front of the thin red line at Balaclava, through the mist at early morn on the heights of Inkerman, on the sunny plains of India, at the relief of Lucknow, said they *were brow ! brow !* Clan patterns are as staple as wheat ; it was for us to judge of the colours. The goods were on the table and in the cases before us. We had A. & S. Henry & Co.'s invoices and James Ogilvy's letters, the only sources whence Mr. Thomas Ogilvy got his information ; yet he began to reiterate and talk against time for his own interest, and possibly to prevent Mr. Young and myself from forming an opinion. As he could give us no further information than we were already in possession of, from the documents and his explanations, I politely requested him to retire, as we had only two cloths to value and see that the colours were right. Our conscientious opinion of the value is on record, and all particulars : one cloth, 29 inches wide, was 13d. sterling ; the 30-inch finer make, 18d. ; the 34-inch, same quality, 22d. sterling. This finished, we did no swearing, as we did not incline, or feel that there was any necessity for us, to do so. It was not till then we were shown for the first time a sample of the same make and style of goods—a 27-inch clan tartan on a rather heavier cloth, which was purchased by an experienced buyer from the makers for one of the old respectable A 1 wholesale houses in the trade, and which had been entered and paid duty for in July, 1871, at the cost and fair market value of the goods, at the time and place of exportation, that being 13 $\frac{3}{4}$  sterling per yard. The buyer has since told the writer that the goods *sold well*. We were told, also, for the first time, that the 34-inch finer cloth had been entered and paid duty on last autumn, at 22 $\frac{1}{2}$ d. sterling. This statement has been since confirmed by the importer, who has since shown me the goods in his warehouse, and, though his cloth is not as good as the 34-inch in Ogilvy's lot, he considered the lot good value, and, judging from his selling price marked on the board the goods were rolled on, I had a right to believe so. The appraisers and the experts had now done with the matter, and Ogilvy & Co. set about to agitate and enlist sympathisers. This is their own concern and right ; “ but people who live in glass houses ought not to throw stones ” at

other people. Thomas began with the appraisers, next with the conduct of the experts at the examining warehouse, when they met to look at the goods, and it occurs to me that a recent writer's theory has some show of being correct.

He affirms that the lost Ten Tribes came to Britain, and it is probable that some of them may have settled in the heart of Scotland within sight of Abbey Craig and Dimyot, where the scenery resembles that of their native land.

☛ Their descendants may now be amongst us ; like father, like son. We have it on record that, in very early times, there were traders in Palestine, and the business tactics they practised were similar to ours now a days over a *bargain*. "It is naught, it is naught, saith the boyer, but when he hath gone his way, he boasteth."

Ogilvy & Co. now come on the field, and call on fifteen sympathisers, mostly merchants,—whether they were all discreet and competent remains to be ascertained by the written opinions of Ogilvy & Co. and Mr. Gordon who is introduced at letter No. 10. The letter of Ogilvy & Co., dated 8th August, to the President and Council of Board of Trade, says : "We beg to state that Messrs. Johnston and Young are not 'discreet and competent judges' in this case ; neither of them *have* been in the English markets for years, and, therefore, they are unable to form a correct opinion of goods of a fluctuating character, such as those in question." John Gordon, in letter No. 10, in reference to this point, writes to Ogilvy & Co., on the 7th August : "I consider it unfair to the trade that men who have not bought goods in Britain for many years"—in my own case it is only *two*—"should be called upon to arbitrate in a case like this. *Those and those only* who are regularly in the habit of buying personally, knowing the markets and their workings, are able to put a value on goods such as those in question." Now, taking the men by their letter in rotation, "which mark."

No. 1. The lowest and only price he gives is 13d. sterling per yard,—the experts' valuation.

No. 2, as "rated" by Ogilvy & Co. as well as by No. 10, John Gordon, must be incompetent.

No. 3 is the man who bought the 27-inch clan tartans that paid duty at 13½d. sterling in July.

No. 4 who entered and paid duty on the 34-inch goods at

22½d. sterling,—our valuation of 34-inch was 22d. sterling.

No. 5. No price named, non committal.

No. 6. states that the price named is nothing *less* than I would expect to pay for such a lot,—query, how much *more*?

No. 7. Sorry for you John, you are incompetent.

No. 8 holds the opinion of the experts that the invoices are all genuine, but differs from James Ogilvie, who thought the goods “cheap, and quite a heap for the money.” J. B. must now be biting his finger-points that he missed making his expenses out of the several lots he *declined*.

No. 9. This opinion of value is no doubt as genuine as the invoice was in the month of April; but far below the fair market value of the goods on 8th June—the date of shipment.

No. 10. An incompetent.

No. 11. Same evidence as No. 9 gives,—another of the Mr. Timid kind, who missed making *his expenses* by the *one lot*.

No. 12. Invoice again genuine, but April prices again as No. 9. As to goods, opinions differ as to the value between one season and another just 15 per cent. The Mr. Timid again misses the prize that would have paid his expenses. James Ogilvy thought them “cheap, and for the money quite a heap, as any man would buy with cash and sense.”

No. 13. An *incompetent*,—sorry for you.

No. 14. Invoices genuine,—experts’ opinion again,—but holding the very opposite opinion from Ogilvy & Co., as to the qualification of the appraiser. Ogilvy & Co. was one of those firms which signed a requisition to the Minister of Customs, in January last, recommending this appraiser for the situation then expected to be shortly vacant.

No. 15. Invoice genuine,—experts’ opinion again,—but piles on the agony in the most “cruel” fashion, in a way that neither appraisers nor experts ever attempted. Finally, John Ogilvy and Thomas Ogilvy are, according to No. 10 reasoning, *both incompetent*.

The Council of the Board of Trade, after considering the case with *much care*, mistook the law which governs the appraiser on page 21, “less O. & Co’s. remarks,” and substituted instead a “Form of Declaration of the Owner, Consignee, or Importer, with the bill of Entry,” given with their opinion of what the law should be, and what they would like

it to be, also their view of what the Government should do before they inflict the legal penalties. This seems to me to be much the same as the Customs department try to carry out in practice here.

Their reading of the law seems to be a mistake, if so, their case fails—breaks down, and another meeting will have to be called.

The Secretary, who is very distinguished in figures, does not seem able to read law clearly, and the Chairman, who might be expected, as an importer, to know the Customs Act, signs a memorial which contains a very strange perversion of the Statute. "The Council," the memorial says, "having considered the case with much care, believe that the prices at which Messrs. Ogilvy & Co. entered the goods were the actual cash and fair market value of them *at the time and place of purchase*. The law reads, "*At the time and place of exportation*," a very material difference, and, in fact, the consideration on which the whole case turns.

At page 3 of the pamphlet, it is said: "a business experience of more than twenty years, as importing merchants in this city, has not furnished a parallel to the case, as set forth in the accompanying documents. We were, of course, fully convinced that the procedure and pretensions of the Customs officials here were unjustifiable."

The writer of the pamphlet seems to forget that Mr. John Ogilvy was an expert himself in January, 1870, when an importing agent of cotton thread on spools had trouble with the Collector and Appraiser. The decision of the Customs officials, now on record, was acquiesced in by Mr. John Ogilvy: *That the identical articles of merchandise must pay the same duty, irrespective of who the furnishers are, or who the importers may be*, the decision being that the importers pay at the increased rate of 9d. in excess of the entered value of 10s. 9d. and also pay the experts a fee of \$5 each.

Mr. John Ogilvy, with the letters of his sympathisers, the memorial of the Board of Trade, an introduction to good society, proceeds to the Capital, and with these a large show of bluster, piles of agony, of depreciation of the judgment and capability of the appraisers, spiced with choice epithets. A "real freeen," reverses the decision of sworn appraisers, who did their duty in deciding that "the identical articles of mer-

chandise must pay the same duty, irrespective of who the furnishers are, or the importers may be," and in my humble opinion has succeeded in obtaining the commission of a decided wrong to those who enter their goods at their value at the time and place of exportation, as given by declaration on page 21.

The Messrs. Ogilvy & Co. might have been satisfied with their success in blustering, &c., and not have indulged in clap-trap of which the following is a sample on 3rd page of their circular :

"The Customs officials here say we must not buy abroad and bring into Canada cheap goods ; if we do, as in the present case, we are to be called upon to pay duty on a higher price than was given for the goods."

The Customs officials never do nor can charge in this way. Britain is a large market. The manufactures and produce of the known world are brought to it by her ships and are for sale by her merchants. Many of our buyers get all their goods there ; but, should any importer find that he can buy the same goods in a foreign market, at a lower price, he is at perfect liberty to do so, bring them, without breaking bulk, from the nearest shipping port to Canada, show the invoice at the Custom house here, and, if it exhibit the actual cost or fair market value of the goods at the time and place of exportation, no post entry is ever required, even should the goods be 30, 40, 50 per cent. lower than the price another importer paid for them in Britain. That, in my humble opinion, is the law, and the justice of it is plain. We have to thank our legislators for all their labours in this respect, and it would be well if the Department were more careful in carrying out the law. I hold that the appraisers have done so in the present case ; the wrath of the Messrs. Ogilvy, "with their twenty years' experience ;" the carefully considered opinion of the Board of Trade, which did not prevent them making an egregious blunder ; and the illegal reversal of the decision by the Minister of Customs, to the contrary notwithstanding. That reversal may yet be found to have formed a dangerous precedent. By the principle laid down, what is to hinder invoices to be dated back an indefinite length of time ? During the war in the United States, for instance, when cottons ran up so rapidly, what



security would there have been for the honest trader, if invoices dated back for months had been received as evidence of the value "at the time and place of exportation?" I have no doubt whatever, of the genuineness of the invoices in the present case, but surely a little reflection may show the risks incurred of disregarding a rule, wisely considered and intended to secure the equal collection of revenue from goods of the same intrinsic and marketable value. That is the real point, and it is to that view of it I desire to draw the attention of my brother merchants.

JAMES JOHNSTON.

P.S.—In the part of the country to which I belong in Scotland, there is a very useful class of men, though sometimes lame——*mole catchers*. To catch the vermin they have traps, "their assistants," and as is the case in the Customs Examining Warehouse here, though the appraiser is *lame* he has "assistants," and an accident has thrown a particularly good one in his way, who has answered the purpose *fine*.